



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-176**

**TIFFANY STINE**

**APPELLANT**

**VS.**

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET  
DEPARTMENT OF CRIMINAL JUSTICE TRAINING  
J. MICHAEL BROWN, APPOINTING AUTHORITY**

**APPELLEE**

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This matter came on for an evidentiary hearing on October 27, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Tiffany Stine, was present at the hearing, and represented by the Hon. Paul Fauri. Appellee, Justice and Public Safety Cabinet, Department of Criminal Justice Training, was present and was represented by the Hon. Dana Todd. Appearing as Agency representative was Sharon Davis.

This matter involves the dismissal of Appellant by letter dated June 20, 2014, a copy of which is attached as **Recommended Order: Attachment A**. Essentially, the Appellant was fired for continuous sleeping on the job, which culminated in a June 5, 2014 incident. The burden of proof was placed upon the Appellee by a preponderance of the evidence to show that the penalty was neither excessive nor erroneous and was justified under all surrounding circumstances.

**BACKGROUND**

1. Appellee's first witness was **Kevin Rader**. He is employed by the Department of Criminal Justice Training (DOCJT) located at the Eastern Kentucky University in Richmond, Kentucky. He has been the Assistant Director over the Administrative Division in excess of five years.

2. The witness related that the Agency is responsible for the training of Law Enforcement Officers, which consists of an eighteen-week training, after which they are certified. This training also encompasses Court Security Officers and Telecommunicators.

3. The witness stated that the training complex encompasses a dorm, an administration building, a classroom building, and a firing range, all of which are used by the various trainees.

4. The witness introduced Appellee's Exhibit 1, a collective exhibit containing a June 8, 2009 reprimand, an October 20, 2009 reprimand, and the Appellant's October 22, 2009 response to the reprimand. The June 8 reprimand to Appellant referred to her use of a medication for which she did not have a current, valid prescription. The October 20 reprimand was for the Appellant having been found asleep at her desk during work hours on approximately sixteen days ranging from January 26 through October 12, 2009. The Appellant's October 22 response contained admissions by her that she perhaps been asleep three to five times during the alleged dates. The remainder of the response was an explanation of a change of medication, which she contended had improved her behavior and had thus prevented the sleeping incidents. In her response, the Appellant also adamantly denied being asleep on October 12, 2009.

5. On cross-examination, the witness attempted to explain the office layout wherein the Appellant works. He identified her current work position as being in the Funderburk Building. Apparently the Appellant works in the Technical Services Section which is located on the first floor, along with the mailroom. According to the witness, most public access to the building occurs on the second floor, one floor above the Appellant's workstation.

6. He also added that, as her supervisor, his office is in close proximity to the Appellant's desk, which is located outside his office. He also mentioned that he has not personally seen the Appellant dozing at her desk or sleeping at work.

7. The witness expanded upon Appellee's Exhibit 1 by explaining that the June 8, 2009 reprimand was given for the Appellant's use of non-prescription medicine in May of that year. As a result, she was referred to the Kentucky Employee Assistance Program (KEAP) for help if needed. The witness also mentioned that the Appellant's duties included making copies of course materials and handling mail.

8. In conclusion, the witness also identified Appellant's Exhibit 1, a November 7, 2011 Letter of Commendation to the Appellant. This was given for her hard work and dedication to the Agency as an Administrative Specialist II within the Information Systems Branch.

9. On redirect, the witness was directed back to the layout of the complex, wherein he also added that officers who arrive for training have widespread access to the classrooms and to the cafeteria, and as a result could end up passing by the Technical Services office where the Appellant works.

10. The Appellee's next witness was **Mary Pascal**. She has been employed by the Agency as an Administrative Section Supervisor in the Personnel Section since 1999. She related that in June 2009, the Appellant was under her supervision until December of that year, when she transferred to another position. The witness explained that on October 20, 2009, she observed the Appellant at her desk asleep and therefore caused the written reprimand dated October 20, 2009 to be issued. The witness also testified that she had previously observed the Appellant asleep on multiple occasions, but on those occasions had awakened her for each date listed in the reprimand, so as not to embarrass her. She also confirmed that she did not observe the Appellant sleeping on October 12, 2009.

11. The witness referenced the Appellant's October 22, 2009 response and observed that the Appellant had admitted sleeping on various occasions. The witness also added that she had allowed the Appellant to nap occasionally during her breaks, if the Appellant gave the witness notice and closed her door. The apparent intention of this was to prevent outsiders to the Agency from seeing an employee sleeping.

12. The witness then explained that as of September 13, 2009, the Appellant became under the supervision of a Scott Bowerman, who was succeeded by Eric Garner. The witness also testified that no request for accommodations were made by the Appellant to this witness.

13. The Appellee's next witness was **Ande Godsey**, an Information Systems Branch Manager at the Agency. From early 2009 to September 13, 2009, he was the Appellant's direct supervisor. After she transferred, he became her second-line supervisor. This witness also confirmed that at various times during her tenure, Appellant has worked on both the first and second floors of the Funderburk Building. The witness explained that while under his supervision, the Appellant performed duties of filing reports, learning security systems and becoming more knowledgeable of the IT programs. His only requirement, as her supervisor, was that she not fall asleep.

14. The witness then introduced Appellee's Exhibit 2, an April 13, 2010 letter issuing the Appellant a five-day suspension for sleeping at her desk. Apparently this was observed by Division Director Donna Masters and reported to this witness.

15. On cross-examination, the witness identified Appellee's Exhibit 4, which contained a June 6, 2014 memorandum in which this witness participated. This memorandum contained notes and listed the various corrective actions which had been documented and attempted as a result of Appellant's observed sleeping at her desk. The witness then identified Appellant's Exhibits 2 through 5, her annual evaluations from 2010 through 2013.

16. The 2010, 2011 and 2012 evaluations all had the Appellant ranked "Highly Effective." The 2011 evaluation contains no mention of the Appellant's sleeping on the job.

17. Exhibit 5 is the Appellant's 2013 evaluation, which rated her as "Good." The witness also mentioned that he had supervised the Appellant through September 2013 and had conducted two interim interviews with her. Apparently the final score for the year 2013 was given by her new supervisor, Scott Bowerman.

18. This witness also explained that he had signed on behalf of Appellant for her to receive Veteran's Administration benefits in 2010. This was because he realized that she was in much pain as a result of a jaw injury sustained while serving in the Air Force. He also added that she had never brought to him information relating to her medical conditions.

19. He stated that he generally became aware of her doctor appointments, but the only letter he received from her physician was one stating that her medication should not make her sleepy. This was approximately in May 2012.

20. On redirect, the witness was then referred back to Appellant's Exhibit 2, the Year-End 2010 evaluation. He did note that his first interim review contained a note that the Appellant had fallen asleep at her desk in January 2010 and that in April 2010, the Appellant was again found asleep and issued a five-day suspension.

21. On re-cross, the witness admitted that the Appellant's Year-End Evaluations scores had actually increased from 2010 through 2012.

22. The Appellee's next witness was **Scott Bowerman**. Until his retirement on March 1, 2014, he was an Information Systems Supervisor at the Agency. He supervised the Appellant from September 13, 2009 until his retirement. He described seeing the Appellant asleep at work on multiple dates in 2013 and early 2014. The witness was referred to Appellee's Exhibit 4, and therein referenced his note of December 10, 2013, detailing his observation that morning of the Appellant being asleep at her desk. He further detailed that he had observed her for several seconds, cleared his throat, and again waited several seconds before waking her in a loud voice. The witness then explained that he had met with the Appellant following her return from the five-day suspension and had warned her about any future sleeping on the job and the fact that disciplinary action would be taken.

23. On cross-examination, the witness confirmed that he had given the final rating on the Appellant's 2013 evaluation, in consultation with previous supervisor, Ande Godsey.

24. The Appellee's next witness was **Eric Garner**. He has been employed by the Agency as an Administrative Section Supervisor over the Technical Services Section since February 2014. Since that time, he has been the Appellant's supervisor. He testified that he has seen the Appellant asleep on one time, that being June 5, 2014, at 4:15 p.m. This was after having been alerted by another employee. The witness testified that the Appellant's desk was adjacent to his window and that he went out to the door leading to her desk, where he bent down to face level of the Appellant and found she was asleep.

25. The witness then testified that he then compiled the notes which are found as a part of Appellee's Exhibit 4 and once this was sent up through the chain of command, his recommendation for dismissal was followed. This incident was further documented by Appellee's Exhibit 5, a Performance Incidence Log, which this witness kept regarding the Appellant.

26. On cross-examination, the witness testified that when he came from his office to stand in front of her desk, where he observed her sleeping, he also saw some brochures on her lap. He added that one hand was in a sling, resulting from an injury she had suffered the day before, and that her other hand was on her lap. **[Hearing Officer Note: Regarding the injury suffered the day before in a fall while in the building, the witness testified that he took the Appellant to the hospital.]**

27. He then went on to relate that the Appellant returned to work the following day on June 5, 2014, but could not perform all normal duties.

28. Also on June 5, 2014, Garner went on to explain that Sharon Davis had also observed the Appellant asleep and had called Director Donna Masters, who in turn informed this witness that she knew about the incident.

29. Regarding the June 5 incident, the witness also related that the Appellant, after he woke her, asked him a question about deferred compensation. This occurred at approximately 4:20 p.m. Thereafter, the Appellant left work at approximately 4:45 p.m.

30. The Appellee's next witness was **Donna Masters**. She has been employed by the Agency as the Director of the Administrative Division for approximately ten years. She testified that the Appellant is in the Administrative Division and her direct supervisor is the Deputy Commissioner. Masters went onto testify that she had first observed the Appellant asleep in her office December 22, 2009, after observing the Appellant for approximately one minute. Thereafter, this witness told Kevin Rader and Ande Godsey of her observation.

31. The witness continued by stating that she had met with the Appellant in January 2010 after the December 22 incident, wherein the Appellant admitted to her she had been sleeping.

32. The witness then testified that sleeping on the job hurts the image of professionalism which the Agency tries to project to the law enforcement officials it trains. The witness then introduced Appellee's Exhibit 3, a January 24, 2014 letter placing the Appellant on suspension for ten days for sleeping.

33. On cross-examination, the witness answered that she has been designated as the Appointing Authority with signature authority since June 16, 2004. She also added that regarding access to the print shop area where the Appellant works, that recruits tour the facility, and other state dignitaries often come through there. However, she also added that no one outside the Agency has ever made complaints about seeing the Appellant asleep.

34. The Appellee's next witness was **Sharon Davis**. She has been the Branch Manager over the Fiscal Management Branch in the Agency for approximately the past fifteen months. She confirmed that she had contributed to the memorandum of June 5, 2014, contained in Appellee's Exhibit 4. On that date, she observed Appellant asleep at approximately 4:18 p.m. in the Technical Services area.

35. Thereafter, she attempted to reach Donna Masters, and could not immediately do so. She later did contact her approximately 4:25 p.m. to inform her of her observations. She was aware that the Appellant had injured her arm the day before and that her arm was in a sling on June 5.

36. She testified that Appellant told her on that day that she had not slept well the night before and had taken sleeping pills at approximately 10 p.m. the previous night.

37. The Appellee closed.

38. The Appellant, **Tiffany Stine**, then called herself as her only witness. Appellant previously served in the U.S. Air Force for four years, including stints with the Department of Defense in Korea and New Jersey. She has a Bachelor's Degree in Business with an emphasis in Human Resources. In September 2004, she began employment with the Agency.

39. She testified that she had suffered an injury in 1995 while in the Air Force. As a result, she has been classified as a disabled veteran. Initially she was classified 10 percent disabled, but this was increased to 60 percent after June 2014.

40. From 2004 to 2009, she worked in the Human Resources field at the Agency and then became an Administrative Specialist II working first for Mary Pascal and then Ande Godsey. Under these supervisors she performed a myriad of duties, and then transferred to Technical Services on September 1, 2013. There her initial supervisor was Scott Bowerman, followed by Eric Garner.

41. The Appellant testified that on June 4, 2014, she fell at work and injured her right arm. She returned to work on June 5, 2014, being on light duty. She further testified that at 8:00 a.m. on June 5, she began to print letters and get the mail ready. She stated that she stayed busy until lunch and also was busy after lunch up until approximately 4:00 p.m. Then she began looking at brochures relating to the Kentucky Retirement Systems and the Deferred Comp system. She explained that she had them propped on her lap to read. She could only use one arm since her right arm was in a sling.

42. During this time, the Appellant testified that supervisor Garner came to her and said he wanted to see her in his office. There, he told her he had observed her sleeping. He further asked her if her arm was hurting and if she had slept well the previous night.

43. She also related that Sharon Davis had asked her the previous day (June 4) if the hospital had prescribed medications, to which she replied she had not yet filled them. However, she stated she had previously informed Garner of other medications she was taking. The Appellant also stated that she had not been aware that Sharon Davis or Garner had come around her desk, as previously testified to, to see if she was awake. She claimed that it was just because she is able to "block out" distractions.

44. The Appellant then denied previous testimony regarding the number of persons potentially coming through her workstation. She stated that no tours ever go through her station and rarely do recruits come through her office space. She also confirmed previous testimony by Pascal that there was an agreement for her to lay her head down on breaks so as to relieve her migraines, as long as she gave advanced notice and closed the door. She also stated that this practice continued under Ande Godsey.

45. The Appellant then identified Appellant's Exhibit 9, a Teamwork Award awarded to Program Support staff in the Carry Concealed Deadly Weapons Program. The Hearing Officer notes that Appellant was one of twenty-six employees who received this award.

46. The Appellant then explained that she had a meeting with supervisor Garner on June 5 (the day before he decided to recommend termination) in which he told her he had observed her being asleep approximately thirty minutes. The witness said this was impossible, as she had been reading the above referenced brochures.

47. On cross-examination, the witness did admit that she has previously admitted to her supervisors to being asleep at various times. However, she blames many of these times on the fact she was taking medications. She also confirmed that regarding the October 20, 2009 reprimand, she had admitted sleeping for all dates except one listed there.

48. The witness also confirmed that she had told supervisor Godsey previously that she was "sorry she let him down" by sleeping on the job. However, she said she was not asleep when Division Director Masters observed her sleeping and thereafter reported it to Garner. She again denied being asleep on June 5, 2014.

49. The Appellant testified that she was told at various times by her supervisors that, if she were drowsy, she could take a walk to refresh herself. She also made the point that since she began to tell the supervisors in 2009 that she was on medications, it is improbable that they waited until 2014 to terminate her for sleeping.



**FINDINGS OF FACT**

1. The Appellant was terminated by letter dated June 20, 2014, for allegedly having been found asleep at work on June 5, 2014. The June 5 incident was the culmination of a series of previous incidents in which the Appellant had been disciplined for sleeping on the job. Previous actions taken against the Appellant included a June 8, 2009 referral to the Kentucky Employees Assistance Program (KEAP) for sleeping during work hours; an October 20, 2009 written reprimand for sleeping during work hours; an April 13, 2010 five-day suspension for sleeping during work hours and a ten-day suspension issued on January 24, 2014, for sleeping at work.

2. Testimony from Mary Pascal, Ande Godsey, Donna Masters and Scott Bowerman clearly established that the Appellant has a history of sleeping while at work. In addition, the Appellant herself admitted she has slept while at work on multiple occasions.

3. The Appellant was taking some medication for a previous injury suffered while serving in the U.S. Air Force. However, no evidence was introduced which would cause the Hearing Officer to believe that the medications caused the Appellant's drowsiness.

4. The Appellant injured her arm on June 4, 2014, and was wearing a sling upon returning to work on June 5, 2014. She testified that she had taken sleeping pills at approximately 10 p.m. on the night of June 4. The Hearing Officer finds that these pills would have had no effect upon the Appellant as late as 4 p.m. the following day.

5. The Appellant testified that supervisor Garner told her that he had observed her being asleep for approximately thirty minutes on June 5, 2014. The Hearing Officer seriously doubts this length of time passed before the Appellant was awakened by Garner. It is apparent to the Hearing Officer that several minutes must have passed, since upon Garner's first observation of the Appellant sleeping, he went and found Sharon Davis to come and confirm his observations.

6. The Appellant claimed she was reading brochures related to the Kentucky Retirement Systems and the Deferred Compensation System instead of napping, as Garner has described. Although she claims that upon being awakened, she asked Garner a question about Deferred Compensation, this does not convince the Hearing Officer that she was actually awake during Garner's observation of her. Rather, the Hearing Officer finds that the Appellant was indeed asleep at approximately 4:15 p.m. on June 5, 2014. This constitutes misconduct and poor work performance under 101 KAR 1:345.

7. The Hearing Officer finds that the Appellant's annual evaluations for the years 2011 through 2013 show that she was an above-average employee. However accurate those evaluations may be, they do not hide the fact that the Appellant has a proven history of sleeping on the job.

8. Likewise, the Hearing Officer finds that the Appellant failed to avail herself of various efforts by the Agency to address her sleeping problem, such as allowing her to use the gym or the walking trail, and by allowing her to give advance notice and be allowed to close her door and nap for short periods of time.

9. Although the Appellant is an above-average employee, nevertheless, she has a proven history of sleeping on the job. The Hearing Officer does not believe that an additional suspension or a demotion would solve the Appellant's basic problem of sleeping while at work. In addition, the Hearing Officer strongly recommends that the Appellant seek some type of intervention for this recurring problem.

### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that the Agency carried its burden by a preponderance of the evidence to show that the Appellant was sleeping at her desk while at work on the afternoon of June 5, 2014.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **TIFFANY STINE VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CRIMINAL JUSTICE TRAINING (APPEAL NO. 2014-176)** be **DISMISSED**.

### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

**ISSUED** at the direction of **Hearing Officer R. Hanson Williams** this 16<sup>th</sup> day of December, 2014.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof mailed this date to:

Hon. Gerald Ross  
Hon. Paul Fauri

# DOJ

DEPARTMENT OF  
CRIMINAL JUSTICE TRAINING

Steven L. Beshear / Governor  
J. Michael Brown / Secretary  
John W. Bizzack, Ph.D. / Commissioner

June 20, 2014

Tiffany D. Stine

00199737

VIA CERTIFIED MAIL

Re: Notice of Dismissal

Dear Ms. Stine:

Having considered all the statements made on your behalf during your pre-termination hearing held on Thursday, June 19, 2014 at 10:30 a.m., I have determined that you did commit the violations as outlined in my letter to you dated June 9, 2014.

Therefore, based on the authority of KRS 18A.095, you are hereby notified that you are officially dismissed from duty and pay effective June 20, 2014.

You are being dismissed from your position for violation of 101 KAR 1:345, Section 1 (lack of good behavior), and upon the recommendation of the Administrative Division and for the specific reasons outlined in my letter to you dated June 9, 2014 (Copy enclosed and incorporated by reference herein).

In accordance with KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,



John W. Bizzack, Commissioner

Attachments: Appeal Form; Copy of letter dated June 9, 2014

cc: Secretary, Personnel Cabinet  
Personnel File



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Recommended Order Attachment A